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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own
motion into the operations and
practices of Milton W. Henke, an
individual, doing business as Milt's
Livery Service,

Respondent.

ORIGINAL

PUBLIC UTILITIES COMMISSION
JANUARY 10, 1992
SAN FRANCISCO OFFICE
I.92-01-005

ORDER INSTITUTING INVESTIGATION

Milton W. Henke dba Milt's Livery Service, respondent carrier, (Milt's) whose mailing address is 375 Arroyo Drive, South San Francisco, California 94080, is engaged in the business of transporting passengers over the public highways of this state for compensation. Milt's operates pursuant to a charter party carrier certificate issued August 6, 1987. (TCP-875-B)

Public Utilities Code (P.U. Code) Section 5378.5 prescribes a procedure by which the Department of the California Highway Patrol (CHP) may recommend to the Commission that the operating authority of charter party carrier be suspended for the carrier's failure to meet safety requirements. This section provides that if the CHP submits a written recommendation of suspension, the Commission shall suspend the carrier's operating authority. Before submitting such a recommendation the CHP must notify the carrier in writing that (1) its safety record is unsatisfactory, furnishing a copy of any documentation or other evidence supporting the determination, (2) the unsatisfactory rating may result in a suspension or revocation of the carrier's operating authority, and (3) a review of the rating may be requested from the CHP within five days of its receipt.

P.U. Code Section 5378.5 provides that a carrier may appeal a suspension by requesting a hearing before the

Commission, at which the carrier shall show cause why the suspension should not be continued. This section further provides that a suspended carrier may obtain a reinspection of its terminal by filing a written request for reinstatement with the Commission accompanied by a fee of \$125. The Commission may revoke the carrier's authority at any time 90 days or more after its suspension if the Commission has not received a written recommendation for reinstatement from the CHP and the carrier has not filed a written request for hearing with the Commission.

Under the provisions of P.U. Code Section 5378.5 the Commission may suspend or revoke the operating authority of charter party carriers for consistent failure to maintain vehicles in safe operating condition and in compliance with the Vehicle Code and with regulations on carrier vehicle safety contained in Title 13 of the California Administrative Code.

Milt's charter party carrier operating authority was suspended on January 14, 1991 pursuant to Section 5378 and Resolution TL-18336. Respondent had been initially assigned an unsatisfactory terminal safety rating as a result of a vehicle and records inspection conducted by the CHP on December 17 and 18, 1990. This inspection covered three vehicles and resulted in two vehicles being placed out of service for imminently hazardous wheel and suspension defects.

Respondent filed an application for reinstatement with the Commission and caused the CHP to conduct another terminal inspection on February 25, 1991.

The second inspection included 5 vehicles and revealed 19 mechanical safety violations. Four vehicles were placed out of service for imminently hazardous mechanical safety violations. A second unsatisfactory terminal rating was assigned and the CHP recommended that the suspension be continued.

Milt's requested reinspection of its terminal on March 13, 1991. A reinspection of Respondent's terminal was conducted on March 21, 1991, and the result indicated that Respondent's

terminal was then satisfactory and that the suspension should be lifted.

Due to the certificate of insurance being cancelled, reinstatement of Milt's authority was held in abeyance until proof of adequate liability insurance was again on file with the Commission (P.U. Code Sec. 5391). Respondent's authority was reinstated April 23, 1991.

A staff investigation disclosed that Milt's had apparently continued to conduct operations as a charter party carrier during the period January 14, 1991 through March 27, 1991, when its operating authority was suspended for failure to meet CHP safety requirements.

It appears that Milt's may have conducted operations as a charter party carrier over the public highways of this state during a period of operating authority suspension and that the Respondent carrier may have violated Section 5379 of the P.U. Code.

Good cause appearing; therefore,

IT IS ORDERED that an investigation on the Commission's own motion is instituted into the operations and practices of Milt's for the purpose of determining:

1. Whether respondent Milt's Livery Service has violated Section 5379 of the Public Utilities Code by conducting operations after his operating authority was suspended for failure to meet CHP safety requirements.

2. Whether any or all of respondent carrier's operating authority should be cancelled, revoked, or suspended, or in the alternative, a fine of up to \$5,000 for each offense, or for each day of a continuing offense, be imposed pursuant to Sections 5378 and 5415 of the CODE.

3. Whether respondent Milt's should be ordered to cease and desist from any and all unlawful operations and practices.

4. Whether any other orders that may be appropriate should be entered in the lawful exercise of the Commission's jurisdiction.

A public hearing in this matter shall be held before an Administrative Law Judge of the Commission at a time and place to be determined, at which time and place all interested parties may appear and be heard.

The Executive Director shall cause a certified copy of this order to be served personally forthwith on respondent Milton E. Henke, doing business as Milt's Livery Service.

This order is effective today.

Dated January 10, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


NEAL J. SHULMAN, Executive Director
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